The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

OMNI INNOVATIONS, LLC, a Washington limited liability company; and JAMES S. GORDON JR.

Plaintiffs,

v.

SMARTBARGAINS.COM, LP, a Delaware Limited Partnership;

Defendant.

No. CV06-1129JCC

[proposed] **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' CAN-SPAM CLAIMS AND TO STAY THIS LITIGATION**

THIS MATTER comes before the Court on Defendant SmartBargains.com, LP ("SmartBargains") Motion to Dismiss for Failure to State a Claim pursuant to Fed. R. Civ. P 12(b)(6) or to Stay this Litigation. . Having reviewed the First Amended Complaint, Defendants' Memorandum, Plaintiff's Response, and Defendants' Reply, the Court finds and rules as follows:

1. Plaintiffs fail to allege any basis for standing pursuant to CAN-SPAM Act of 2003, 15 U.S.C. § 7701 et seq. ("CAN-SPAM") because Plaintiffs allegation that they "enabled computer access for multiple users to a computer server that provides access to the Internet" is not sufficient to confer standing under CAN-SPAM.
2. Plaintiffs' claims pursuant to CAN-SPAM are hereby dismissed.

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3. The Court finds that substantially similar and material facts are being adjudicated in independent proceedings which breach upon this case. Accordingly, the Court orders that this entire lawsuit be stayed pending a final judgment in the matter of *Gordon v. Virtumundo*, NO. CV06-0204JCC, W.Dist.Wa. *See* Leyva v. Certified Grocers of California, 593 F.2d 857, 863-64 (9th Cir. 1979) ("A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case."); *see also* Silvaco Data Systems, Inc. v. Technology Modeling Associates, Inc., 896 F. Supp. 973, 975 (N.D. Cal. 1995) ("in the interest of wise judicial administration, a federal court may stay its proceedings where a parallel state action is pending")

DATED this __ day of ________________, 2007.

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UNITED STATES DISTRICT JUDGE J. COUGHENOUR

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